

United States District Court
Northern District of California

AMERICAN STEEL & AIRWAYS, INC., et
al.,

Plaintiffs,

v.

LEXINGTON INSURANCE COMPANY, et
al.,

Defendants.

Case No.: CV 12-03103-JST (KAW)

ORDER REGARDING DEFENDANTS'
JOINT LETTER BRIEFS WITH THIRD
PARTIES

(Dkt. Nos. 91 & 92)

On November 5, 2013, Defendants filed separate joint letters with non-parties Devcon Construction Company (Dkt. No. 91) and the Irvine Company (Dkt. No. 92). Both non-parties were involved in the underlying litigation, in which Plaintiffs settled for \$1.75 million.

Plaintiffs are now seeking reimbursement from Defendants claiming that they owed a duty to defend claims asserted in the underlying action. Defendants are now seeking to obtain attorney billing records by third party subpoena from both non-parties to evaluate the reasonableness of the costs incurred.

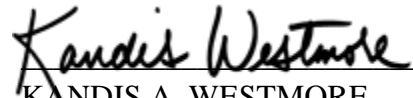
After a review of the two joint letters, it does not appear that Plaintiffs earmarked settlement monies for attorney's fees nor were the billing records provided to Plaintiffs or their insurers in the underlying action. Furthermore, both non-parties have either already provided a redacted copy of the billing records or volunteered to provide redacted copies.

The Court is unclear as to how these documents are relevant to the instant action, namely how the billing records themselves are "reasonably calculated to lead to the discovery of admissible evidence." Fed. R. Civ. P. 26(b)(1). Accordingly, the Court is denying Defendants' request without prejudice. Should Defendants decide to further pursue the billing records, they shall further meet and confer in good faith and draft subsequent joint letters, and specifically

1 address relevancy and why the redacted versions of the billing records are not sufficient.
2 Alternatively, Defendants are also encouraged to consider entering into stipulated protective
3 orders with the non-parties to accomplish their discovery objective if the non-parties are so
4 amenable.

5 IT IS SO ORDERED.

6 DATE: December 10, 2013


KANDIS A. WESTMORE
United States Magistrate Judge

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